IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1009 OF 1989 FROM ORIGINAL DECREE

1) Smt. Maya Devi w/o Kevalram Balani] 2) Gopal s/o Kevalram Balani] 3) Haresh s/o Kevalram Balani] 4) Hemant s/o Kavalram Balani] 5) Smt. Paribai Meghraj Balani] Nos. 2, 3 and 4 being minors] through their natural guardian,] mother, Appellant No.1 above named] (Original claimants 1 to 5)]	APPELLANTS
Versus	
1) Dhondiram Fakira Gavali] since deceased by his heirs -] (a) Bhausaheb Dhondiram Gavali] (b) Smt. Krishnabai w/o Dhondiram] Fakira Gavali]] 2) Pratap Dhondiram Gavali] 3) Pratap Bhagwan Pardeshi] 4) Shankarlal Bhaijee Thakkar] 5) United India Insurance Co. Ltd.] Madras - 14] (Original opponents 1,2,3,5 & 7)]	RESPONDENTS

Shri. Jaydeep Deo for Shri. P.K. Dhakephalkar for the Appellants.

Mr. Tatake for Shri. V.A. Thorat for the Respondent Nos. 1(a), 1(b) and 2.

Ms. Anjali Helekar for Shri B.P. Apte for the Respondent no. 3.

WITH

FIRST APPEAL NO. 589 OF 1990 FROM ORIGINAL DECREE

Pratap Bhagwan Pardeshi	]	APPELLANT
(Original Opponent No. 3)	]	
Versus		
1) Maya Devi w/o Kevalram Balani	]	
2) Gopal Kevalram Balani	]	
3) Haresh Kevalram Balani	]	
4) Hemant Kevalram Balani	]	
5) Paribai Meghraj Balani	]	
Nos. 2,3 and 4 minors through guardian mother Respondent no. 1 Maya Devi (Amended vide Court's order,dated 12th January 1989 passed on C.A. 6352/88)	]	
6) Dhondiram Fakira Gavali, since deceased by heirs :	]	RESPONDENTS
(a) Bhausaheb Dhondiram Gavali	]	
(b) Krishnabai w/o Dhondiram Fakira Gavali.	]	

7) Pratap Dhondiram Gavali]

8) Shankarlal Bhaijee Thakkar]

9) New India Assurance Company Ltd.]

Bombay.]

10) United India Assurance Company]

Ltd., 4, Qhites Road, Madras-14]

]

(Nos. 1 to 5 Original claimants,]
Nos. 6 and 7 Original opponents,]
Nos. 1 and 2, Nos. 8 to 10]
Original opponents 5 to 7]

Ms. Anjali Helekar for Shri. B.P. Apte for the Appellant.

Shri. Jaydeep Deo for Shri. P.K. Dhakephalkar for the Respondents 1 to 5.

Ms. Tatake for Shri. V.A. Thorat for the Respondent no. 6(a), 6(b) and 7.

Shri. S.R. Singh for Respondent no. 10.
None for the other Respondent.

CORAM : **ABHAY S. OKA, J.**
DATE ON WHICH JUDGMENT IS RESERVED : 8TH JUNE, 2006
DATE ON WHICH JUDGMENT IS PRONOUNCED. : 17TH AUGUST, 2006

JUDGMENT

1. These Appeals can be disposed of by a common Judgment as the same arise out of the same Judgment and award made by the Motor Accident Claims Tribunal at Nasik on 25th July, 1986. For the sake of convenience, the parties are hereinafter referred to with reference to their status before the Tribunal. The original claimants are the legal representatives of deceased Kewalram Balani who died in a motor accident which

occurred on 9th May, 1981. On the fateful day at 9.00 am., the deceased was travelling on his motor cycle bearing registration No. MXR 1194 towards village Karsul and Wadala, Taluka Niphad, District Nasik for attending to some work. One Shri D.R. Bapat was occupying pillion seat on the motor cycle of the deceased. Another motor cycle bearing registration no. MTC 7038 which was at the relevant time standing in the name of the opponent No. 5, Shri Shankarlal Bhaijee Thakkar in the records of R.T.O. was allegedly involved in the accident. It is not in dispute that before the day of accident, the said motor cycle bearing No. MTC 7038 was purchased by the opponent no. 3 Shri. Pratap Bhagwan Pardeshi. Though the Opponent no. 3 had purchased the motor cycle before the accident, the entry of his name was not made in the record of the R.T.O.. The learned Member of the Tribunal has recorded that as per the admission given by the learned Advocate appearing for the opponent nos. 3 and 5 below Application at Exh. 120, the said motor cycle was not insured with the Opponent no. 6, the New India Assurance Company Limited. According to the case of claimants, a tractor bearing No. MTW- 3813 and a trolley No. MTS-1096 attached to the Tractor were also involved in the accident. The original opponent No. 1 Dhondiram Fakira Gavali (deceased) was admittedly the owner of the tractor and the trolley. The Opponent No. 2 Pratap, the son of Dhondiram Gavali was driving the tractor at the relevant time. The case

made out in the claim petition is that the tractor driven by the Opponent no. 2 came from the opposite side in a very high speed. The Opponent no. 3 was following the tractor on his Yezdi motor cycle bearing No. MTC 7038. The opponent no. 3 for the purposes of overtaking the tractor and trolley took the Yezdi motor cycle on the wrong side of the road and dashed against left side bar of the motor cycle of the deceased. According to the case of the claimants as a result of the dash given by the opponent no. 3 to the side bar of the motor cycle of the deceased, the deceased and the pillion rider were thrown in the middle portion of the road. Opponent no. 2 who was driving the tractor could not control the tractor and deceased was run over by the tractor or the trolley attached to it. According to the case of the claimants though they were entitled to compensation of Rs.4,85,828.67, they had restricted the claim to Rs.1,00,000/- as they were not in position to pay full Court fees.

2. The Opponent Nos. 1 and 2 filed written statement contending that the tractor and the trolley were not at all involved in the accident and it was the motor cycle driven by opponent no. 3 which gave a dash to the motor cycle of the deceased. The opponent nos. 3 and 5 filed written statement contending that the deceased applied brakes all of a sudden when he realised that it was difficult to take his motor cycle through a small space between the tractor and motor

cycle of opponent no. 3. It is contended that due to sudden application of brakes when the motor cycle was at a high speed, the deceased and pillion rider were thrown away from the motor cycle and the deceased came under the rear wheel of the tractor which was at the relevant time being driven in excessive speed.

3. The learned Member of the Tribunal by the impugned Judgment and Award held that the accident occurred due to rash and negligent driving of the motor cycle on the part of opponent no. 3. The learned Member held that allegations of negligence against the driver of tractor were not established. The learned Member held that the motor cycle driven by the Opponent no. 3 was not validly insured with the New India Assurance Company at the relevant time. The learned Member proceeded to award compensation of Rs.1.00 Lac to the claimants together with interest thereon at the rate of 12% per annum from the date of the accident and the compensation was made payable only by the Opponent no.3.

4. First Appeal No. 1009 of 1989 has been preferred by the original claimants. The Appeal is preferred for seeking enhancement in the compensation. The learned counsel appearing for the claimants submitted that the claim of the claimants in the claim petition was of Rs.4,85,828.67. He submitted that the claim was required to be restricted to Rs.1,00,000/- as

the claimants were not in a position to pay requisite Court fees. The learned counsel appearing for the claimants placed reliance on a judgment of a Division Bench of this Court in the case of Municipal Corporation of Greater Bombay and another v/s Kisan Gangaram Hire and others (1987 ACJ page 311). He submitted that the Tribunal has noticed that the claimants were entitled to a higher amount. He submitted that from the evidence on record it is clear that the claimants were entitled to an amount by way of just compensation which is much more than Rs.1.00 Lac. He submitted that the Tribunal has made reduction of Insurance amount and ex-gratia payment which could not have been made.

5. First Appeal No. 589 of 1990 has been preferred by the original opponent no. 3 Pratap Bhagwan Pardeshi who is the owner of the motor cycle No. MTC 7033. The learned counsel appearing for the said appellant relied upon the application for additional evidence which has been granted by this Court and submitted that on the date of the accident, the motor cycle of the opponent no. 3 was validly insured with the Respondent no. 9 in the Appeal i.e. The New India Assurance Company Limited (Original Opponent no. 6). She submitted that the accident occurred due to rash and negligent driving on the part of the driver of the tractor and in fact the deceased was crushed under the rear wheel of the said tractor.

By pointing out the evidence on record, she stated that the Opponent no. 3 is not at all involved in the accident. She pointed out that even assuming without admitting that the Opponent no. 3 was liable to pay compensation, as the documents which are annexed to Civil Appeal No. 2132 of 2006 show that on the date of the accident, the motor cycle was validly insured with the Opponent no. 6 Insurance Company, the said Company is liable to satisfy the award which is made against the Opponent no. 3. She submitted that the compensation awarded to the claimants is exorbitant.

6. The learned counsel appearing for the claimants supported the appellant in First Appeal No. 589 of 1990 only to the extent that the New India Assurance Co. Ltd. ought to have been held liable to pay compensation to the claimants. The learned counsel submitted that whether the Opponent no. 3 or the driver of the tractor are responsible for accident, the claimants are entitled to enhancement in compensation. He submitted that in case the driver of the tractor is held responsible, the compensation will be payable by the insurer of the tractor.

7. The learned counsel appearing for the insurer of the tractor submitted that there is no evidence on record to show the involvement of the tractor in the accident and therefore the award made by the Tribunal is legal and proper and no interference is required.

8. The first question to be decided is regarding issue of negligence. For deciding the said question, I will have to refer the evidence led by the parties. It is not in dispute that the deceased was plying his own motor cycle at the time of accident. He was approaching towards the site of his work from his house on the fateful day. The claimant examined Smt. Maya Devi, the widow of deceased. She is not an eye witness and therefore for the purposes of deciding the question of negligence, her evidence is not material. Shri. Pratapram Dhondiram Gavali who is the Opponent no. 2 was examined before the Tribunal. On the fateful day, he was driving the tractor to which a trolley was attached. He stated that he was driving the tractor and his father i.e. original Opponent no.1 was sitting by his side. He stated that the tractor was moving in a slow speed as the trailor was fully loaded with onions. He stated that one motor cycle came from behind the tractor and overtook the tractor. He stated that after the said motor cycle went 20 to 25 feet ahead of the tractor, it met with an accident with another motor cycle. He stated that when he reached the spot of accident his father gave drinking water to Mr. Balani who was the victim of the accident. He stated that there was another tractor which was following his tractor. As his tractor was loaded with onions, he could not take the injured to the Hospital and therefore his father used the other tractor which

was following his tractor for taking the deceased to the Hospital. He stated that the motor cycle which was coming from front side and the motor cycle which overtook the tractor collided with each other. He denied that the deceased-Balani was thrown on his tractor or that deceased came under the wheel of his tractor. He stated that when Balani fell down on the road as a result of the impact of the accident, the tractor was at a distance of 25 feet away from the spot of the accident. In the cross examination, he stated that at the relevant time the speed of the tractor was around 20 to 25 miles per hour. He stated that the motor cycle of opponent no. 3 which overtook the tractor was being driven in a very high speed. He denied that at the time of impact, the tractor was only at a distance of 5 to 6 feet from the place of impact. He denied that as a result of impact the deceased-Balani was thrown at some distance. The attention of the said witness was invited to a portion marked "A" of his statement recorded by the Police in which he had stated that the deceased was thrown away as a result of impact of accident and he fell near right side of the wheel. He stated that he had not made such statement before the Police. He denied the suggestion that he alongwith his father took deceased-Balani away from the wheel of the tractor.

9. The evidence of original Opponent no. 3 Pratap Bhagwan Pardeshi is also relevant. He stated that he

purchased Yezdi motor cycle bearing No. MTC 7033 from opponent no. 5 Shankarlal Thakkar. He stated that the vehicle was not transferred in his name in the record of the RTO and subsequently Opponent no. 5 sold the vehicle with his consent to a third person whose name was entered in the record of the R.T.O. He stated that at the time of accident he was coming from Niphad side and was proceeding towards his village. He stated that a tractor and trolley were going ahead of him. He stated that he overtook the tractor. He stated that there is a kaccha road which branches off from Niphad-Pimpalgaon Baswant road towards his village. He stated that after overtaking the tractor, he took a turn and was proceeding towards his village. When he was at a distance of 25 to 30 feet from the main road, he heard a loud noise. He stopped the motor cycle and walked down to the spot of the accident. He stated that he saw a motor cycle at the spot of the accident and one man was under the rear wheel of the trolley attached to the tractor. He stated that as per his direction, the driver of the tractor took the tractor to the back side, so that the man who had come under the wheel could be taken out. He stated that from a nearby tap he brought water and the original Opponent no. 1 Dhondiram put some water in the mouth of injured person. He stated that he identified one Mr. Balani, injured who was an employee with M.S.E.B. He stated that he stopped the tractor which was coming from the side of Niphad and Shri Balani and other injured Shri

Bapat were taken by the said tractor to Government Dispensary at Pimpalgaon. He stated that he visited the dispensary by his motor cycle. He stated that after taking permission of the Doctor who was treating Shri Balani, he went away. He stated that he was prosecuted by the Police, but the prosecution ended in his acquittal. In the cross examination, he stated that he was not aware whether his motor cycle was insured or not on the date of accident. He was confronted in his cross examination by showing a portion marked "A" of Paragraph no. 2 of his written statement. He stated that the details of the accident mentioned in the marked portion were not correct. His attention was invited to certain omissions in his written statement during the course of his further cross examination. In the cross examination he denied that his motor cycle dashed against the motor cycle of Balani after he overtook the tractor. These are the only two material witnesses for the purposes of deciding the issue of negligence.

10) For the purposes of appreciating the stand taken by the said witnesses in the deposition, it will be necessary to refer to the pleadings of the said witnesses. In the written statement of Opponent no. 3 Shri Pratap Pardeshi and the Opponent no. 5 Shri Shankar Thakkar, it is stated that the Opponent no. 3 was plying his motor cycle which was behind the tractor. The said motor cycle was not noticed by

deceased-Balani. When the Opponent no. 3 Pratap tried to overtake the tractor, the deceased-Balani attempted to take his motor cycle in between the tractor and the motor cycle of Opponent no. 3. The deceased Balani suddenly applied brakes and therefore he alongwith Shri Bapat were thrown away from the motor cycle. He has further stated that the Opponent no. 2 did not stop the tractor and the tractor speeded away towards Pimpalgaon. He stated that he alongwith other persons lifted deceased Balani and gave him drinking water.

11} In his deposition the Opponent no. 3 has come out with a completely different version. The case made out by the Opponent no. 3 is totally inconsistent with his pleadings in the written statement. He tried to suggest that he overtook the tractor and took a turn towards road leading to his village when he heard the noise of the accident and came to the spot after stopping his motor cycle. In the deposition, he has stated that the tractor which was driven by the Opponent no. 2 speeded away towards Pimpalgaon. On the contrary in the examination- in-chief itself he stated that the tractor was standing after the accident and in fact deceased- Balani had come under the wheel of the tractor. He stated that deceased Opponent no. 1, Dhondiram gave water to deceased-Balani which was brought by him. Thus the Opponent no. 3 has come out with the case which is totally inconsistent with the

pleadings and his evidence does not inspire confidence. On the contrary the evidence of the Opponent no. 2 Shri Pratap Dhondiram Gavali is consistent with the case made out by him in his written statement. The Opponent no. 2 and 3 have given conflicting versions of the manner in which the accident occurred. The question is which of the two versions deserves to be accepted.

12) Normally the version which is more reliable has to be accepted. In a case there is word against word, the learned Member of the Tribunal has accepted the version of the original Opponent no. 2 and has held that the motor cycle of Opponent no. 3 was involved in the accident. Though the Opponent no. 3 was acquitted, the fact remains that he was prosecuted for commission of an offence under Section 304-A of Indian Penal Code. The acquittal in criminal prosecution will have no bearing in so far as the decision in accident claim is concerned. The learned Member of the Tribunal referred to the alleged Dying Declaration of deceased-Balani on the basis of which order of acquittal was passed. It is observed by the Tribunal that the said Dying Declaration was not proved. The Opponent no. 3 has made out a case in his deposition which is completely inconsistent with the averments in his written statement. As against this, the case made out by the Opponent no. 2 is consistent with his pleadings. Therefore no fault can be found with the

finding recorded by the Tribunal that accident occurred as the Opponent no. 3 was driving his motor cycle in a rash and negligent manner. The finding of the Tribunal that the tractor was not involved in the accident also appears to be correct.

13) In First Appeal No. 1009 of 1989 prayer is for grant of enhancement of compensation. The widow of the deceased stated in the witness box that at the time of death his age was 38 years and was drawing salary of Rs.1430/- per month from his employer- M.S.E.B. The claimants examined one Mr. Bhikchand Karbhari Bagul who was working as a Head Clerk in the office of M.S.E.B. He stated that the in April 1981 the basic salary of deceased was Rs.1135/-, Conveyance Allowance of Rs.200/- and the Dearness Allowance Rs.400/- to 450/- per month. The said witness has deposed about the possibility of deceased being promoted to the post of Deputy Executive Engineer. However, he was unable to give Pay Scale admissible to the said post. He has also not stated that within a particular time the deceased was likely to be promoted. Thus the monthly income of the deceased can be taken to Rs.1800/- out of which 1/3rd amount is to be deducted on account of personal expenditure. Thus the total income comes to Rs.1,200. Hence multiplicand will be 1200 x 12 = Rs.14,400/-. Considering the fact that the age of the deceased was 38 years at the time of death multiplier of 12 deserves to be applied in view of a recent

decision of the Apex Court. Thus the total compensation comes to Rs.1,72,800/- and a sum of Rs.10,000/- will have to be added by way of loss of consortium and the funeral expenses etc. Thus total compensation payable comes to Rs.1,82,800. The Tribunal has observed that the claimants have received insurance amount of Rs.31,000/-and ex-gratia payment of Rs.30,000/-. It is stated that claimants have also received Rs.4321/- by way of medical reimbursement on account of expenditure incurred on the medical treatment of the deceased till his death. It is obvious that amount of insurance money received by the claimants could not have been deducted from the compensation. However, ex-gratia payment will have to be deducted from the compensation amount along with the amount received towards medical reimbursement. Thus a sum of Rs.34,000/- will have to be deducted. The total compensation payable comes to Rs.1,48,800/-.

14) Now the question which is to be decided whether the claimants are entitled to enhancement in compensation especially when they had restricted their claim before the Tribunal to Rs.1.00 Lac. A reliance is placed on the decision of Division Bench in the case Municipal Corporation of Greater Bombay (supra). In Paragraph 11 of the said decision, the Division Bench has held that the Tribunal constituted under the Motor Vehicles Act, 1939 has power to award compensation in excess of that which is claimed in the application.

The Division Bench however laid down procedure which is to be followed before granting compensation in excess of the claim made. In paragraph 11 of the said decision, the Division Bench has held that :

> "11. The only question that requires to be considered is of the procedure that should be followed by the Tribunal before awarding higher compensation. We are of the view that in all such cases a proper notice or intimation should be given to the opposite party so that the opposite party has an opportunity to contest the claim even by leading evidence, if necessary. Ordinarily the Tribunal should take a written application from the claimant. This application need not necessarily be in the form of an amendment to the original application. Since as stated earlier the amount of compensation claimed or the specific heading under which it is claimed is no more than in the nature of the particulars of the claim, a variation in the same does not change the cause of action, which is the accident. It only furnishes additional material for assessing the claim. The additional claim should as far as possible be taken in writing which should also indicate the reasons why the additional claim is made. Where it is not possible to take the additional claim in writing the reasons for the

> same should be recorded. A copy of such written application should be served on the opposite party to give it an adequate notice of the excess amount claimed and to contest it, if it so desires. Where the application is not taken in writing, the Tribunal should make a note of it in its diary and give notice of the claim similarly to the other side."

15) In the present case, there is a specific assertion made in the claim petition filed by the claimants that in fact they are entitled to compensation of Rs.4,85,828. It is, however, stated that due to inability on the part of the claimants to pay Court fees, they have restricted the claim Rs.1.00 Lac. First Appeal No. 1009 of 1989 was admitted on 18th January, 1990. In the Memorandum of Appeal a specific claim has been made for enhancement of the compensation and the claim for compensation made in the appeal is Rs.4,80,000/-. Thus adequate notice has been given to the respondents that the claimants are claiming higher amount. It is obvious that copies of the Memorandum of appeals are served to all concerned respondents and they are given sufficient notice of the fact that the claimants desire to claim additional compensation on the basis of evidence which is already recorded. Thus in my view the claimants are entitled to claim enhanced compensation and the total amount of Rs.1,48,000/- will have to be awarded. The claimants

will have to pay deficit Court fees on Claim Petition. In its recent decision, the Apex Court has held that in a claim under Motor Vehicles Act, 1988 interest at the rate of 7.5% will have to be awarded. Hence rate of interest will be 7.5% per annum instead of 12% per annum from the date of Claim Petition.

16) Now the other question remains to be decided is whether the motor cycle of the Opponent no. 3 was validly insured on the date of the accident. In paragraph No. 2 of the judgment, the learned Member of the Tribunal has observed that an admission is given by the learned Advocates appearing for opponent nos. 3 and 5 below the application Exhibit 120 that the motor cycle owned by the Opponent no. 3 was not insured on the date of accident. It will be necessary to refer to the documents at Exhibit 120. The said document is a notice to produce documents issued by the Advocate appearing for Opponent no. 6 calling upon the Opponent no. 3 and 5 to produce the Insurance Policy issued by Opponent no. 6 bearing no. 4125050 valid from 18th December 1980 to 17th December, 1981. It appears that Shri. R.L. Wagh, Advocate was appearing for the Opponent No. 3 and 5. On the notice at Exhibit 120 there are two endorsements; one endorsement is to the effect that the vehicle was not insured with any Insurance Company and there is a signature appearing below the endorsement. It is not clear as to who has signed the endorsement. The second endorsement made by

Shri R.L. Wagh, Advocate appearing for Opponent Nos. 3 and 5 is that he has received a copy of the Notice. The two signatures appear to be totally different. Therefore the observation made by the Tribunal in paragraph 2 of its Judgment does not appear to be correct. Apparently the endorsement that the vehicle was not insured with any Insurance Company does not appear to have been made on behalf of the Opponent nos. 3 and 5. Alongwith list at Exhibit 92, the claimant has produced a copy of report dated 29th July 1985 issued by Regional Transport Office, Nasik. In the said report the Opponent no. 5 is shown as owner of the motor cycle in question and it is stated that the vehicle was insured with The New India Assurance Company Limited from 18th December, 1980 to 17th December 1981. The number of Policy mentioned in the said report is 4125050. In this connection, it will be necessary to refer the oral evidence on record. The Opponent no. 3 in his examination-in-chief has stated that he obtained delivery of the motor cycle from the Opponent no. 5, but the vehicle was not transferred in his name in the record of R.T.O. and subsequently the vehicle was transferred to a third party with his consent by Opponent no. 5. In the cross examination made by the Advocate appearing for Opponent no. 6, the opponent no. 3 stated that he was not aware whether the motor cycle was insured on the relevant date.

17) An application being Civil Application no.

2132 of 2006 was made by Opponent no. 3 in his Appeal No. 589 of 1990. The said application was for production of additional evidence. The application is for production of certificate of Insurance and Cover Note. The Policy number is reflected from the certificate of Insurance is 415520 and D.O. Code number and Certificate number is Y-421703. The Policy is in respect of the motor cycle No. MTC-7033. The policy is valid from 18th December 1980 to 17th December 1981 and it stands in the name of Opponent no. 5. The Cover Note bearing No. B-055625 shows the vehicle number and make of the vehicle as Yezdi standing in the name of Opponent no. 5. The original Opponent no. 6 Insurance Company is the respondent no. 9 in First Appeal no. 589 of 1990 and in Civil Application no. 2132 of 2006. Though the Notice of the said Appeal was duly served, none appeared for the said Insurance Company both in Appeal and Application. By order dated 8th June, 2006 the said application was allowed.

18) The additional evidence which is produced on record shows that on the relevant date the motor cycle owned by Opponent no. 3 was insured with the New India Assurance Company. The Policy no. is 415520. The material which is produced by the Opponent no. 6 before the Tribunal is as regards TC no. 4125050. On the record of R.T.O. the Opponent no. 5 was the owner of the motor cycle on the date of the accident and the

policy stood in the name of Opponent no. 5. There is nothing on record to show that intimation of transfer was given by the Opponent no. 5 to the Insurance Company before the date of the accident. Therefore assuming that the motor cycle was transferred to Opponent no. 3, the Insurance Company will be liable to pay compensation in so far as third parties are concerned. On the relevant date, the statutory liability of the Insurance Company under The Motor Vehicles Act, 1939 was limited to Rs.50,000/- unless extra premium was paid by the insured. In this case there is no evidence on record to show that extra premium was paid. Therefore the Insurance Company will be liable to satisfy the award to the extent of Rs.50,000/- with interest thereon and proportionate costs.

19) In view of aforesaid discussion, the impugned Judgment and Award will have to be modified by partly allowing both the appeals. Hence, I pass following order.

O R D E R

(i) The impugned Judgment and Award is modified. The operative part of the Award will now read as under:

> "The Opponent no. 3 shall pay to the claimants a sum of Rs.1,48,800/-

together with interest thereon at the rate of 7.5% per annum from the date of filing Claim Petition till realisation together with proportionate costs.

The Opponent no. 6 The New India Assurance Company Limited shall be liable to satisfy the Award made against the Opponent no. 3 to the extent of Rs.50,000/- together with proportionate interest and costs.

The Claim Petition shall stand dismissed as against the Opponent no. 1,2,4,5 and 7 with no order as to costs.

The compensation amount shall be payable to the claimants in equal shares."

(ii) Both the Appeals are partly allowed in above terms with no order as to costs.

(iii) The claimant will be entitled to recover the amount only on payment of deficit Court fees on the Claim Petition.

(iv) The Record and Proceedings and Writ to be sent early.

(ABHAY S. OKA, J.)